

IN THE IOWA DISTRICT COURT IN AND FOR MARION COUNTY

**BILLY DEAN CARTER,
BILL G. CARTER and ESTATE OF
SHIRLEY D. CARTER by and
through BILL G. CARTER, Executor,**

Plaintiffs,

vs.

JASON CARTER,

Defendant.

Case No. LACV095809

RULING

BE IT REMEMBERED this matter came on before the Court on December 10, 2018, on the petition to vacate the judgment filed by the defendant. Plaintiff, Bill G. Carter, was present, represented by counsel for Plaintiffs, Mark Weinhardt and David Fautsch. Plaintiff Billy Dean Carter was not present. Defendant, Jason Carter, was present, represented by his attorneys, Alison Kanne and Christine Branstad. Thereupon, the matter proceeded as shown in the verbatim record.

I. BACKGROUND SUMMARY

A. *The Civil Action.* On December 17, 2017, a civil jury returned a verdict against Jason Carter for over \$10 million in connection with the wrongful death of his mother, Shirley Carter. The jury concluded Jason Carter caused his mother's death by shooting her twice. The jury awarded Shirley Carter's estate damages for loss of function, pain and suffering, and punitive damages of \$10 million. That verdict is presently on appeal.

One of the fighting issues in the civil case was whether the Department of Criminal Investigation (DCI) and Plaintiff could exchange information. This Court authorized Plaintiffs' counsel to share information with the DCI on such terms as the DCI and Plaintiffs agreed, provided Plaintiffs promptly gave defense counsel the same information. The Court prohibited re-dissemination of the information and limited the persons having access to the information. The Court's order, both directly and indirectly, presumed the DCI would not provide all the information in its files to Plaintiffs. Thus, both parties knew or should have known, only the

information DCI agreed to give Plaintiffs would be available during the civil trial.

B. *The Criminal Action.* Two days after the civil verdict was returned, Jason Carter was arrested on a charge of First-Degree Murder. The criminal charge against Jason Carter is still pending at this time. During discovery in the criminal case, Jason Carter's attorneys received copies, electronically or otherwise, of the DCI's investigative files, including a substantial amount of information not provided to the parties during the civil litigation.

Jason Carter maintains that much of the information, which was not available to him at the time of the civil trial, would change the outcome in that case. Jason, therefore, asks the Court to vacate the judgment or grant a new trial based on this newly discovered evidence. Plaintiffs resist.

C. *The Proceeding to Vacate the Judgment.* The evidence, as presented during the proceeding on the petition to vacate the judgment, primarily consisted of written summaries made by DCI agents or local law enforcement after interviewing individuals claiming to have knowledge regarding Shirley Carter's murder. Some of the interviews were also recorded, although not all. Virtually all the evidence Jason presented in support of his position involves some level of hearsay, often double and triple hearsay.

Despite claims by persons purportedly having spoken directly with people involved in the murder, neither the DCI nor the Marion County Sheriff's Office were able to corroborate these allegations. Based on the evidence presented, the Court finds most of the individuals claiming to have information about Shirley Carter's death were themselves incarcerated in the Marion County Jail or facing criminal charges and looking "to make a deal." Much of the information investigators received from these individuals was incomplete, inconsistent with facts garnered from the crime scene, or refuted by ancillary interviews with people named during the initial interview.

One individual repeatedly maintained he had or could get information about Shirley Carter's murder. Facing his own criminal charges, this "informant" wanted the charges against him dismissed in exchange for what he knew or, at the very minimum, substantially reduced. He told investigators he had spoken with one of the murderers, he claimed there were two, and one of the alleged killers admitted to involvement in the murder. Upon further questioning, he back-peddled, saying the killer he spoke with did not "tell me, tell me" about committing the murder, but inferred involvement in the killing. This same "informant" told law enforcement the killers

took Shirley down to the pond where they attempted to scare her in what can only be described as a “water boarding” incident. However, Shirley’s body was not wet nor damp when found and the medical examiner’s report does not suggest water was in any way related to her death. While this individual probably told the most implausible stories, his style was typical of others who sought to improve the person’s own situation by providing so-called information about Shirley Carter’s murder.

While the names of the same people seem to pop up in the interviews, this in and of itself is not compelling. First, because the information provided to law enforcement usually involved two or three levels of hearsay, it is difficult to identify the source of the allegations. Several of the persons interviewed told officers they received the information from another inmate in the Marion County Jail. Sometimes the same inmate was the source for information offered by several people coming forward. Some came forward because the inmate was looking for a break on criminal charges, and some came forward because the inmate thought it was the right thing to do. Second, in the absence of corroboration, like physical evidence or facts that would only be known to the killer, the information is unreliable.

II. LEGAL ANALYSIS

Despite the inconsistencies and hearsay nature of the proffered evidence, Jason Carter takes the position this newly discovered evidence entitles him to vacation of the verdict or a new trial. Jason argues, at a minimum, the jury should have the opportunity to hear and weigh this evidence in deciding liability. Jason seems confident that a jury hearing such evidence will not hold him liable. Plaintiffs, on the other hand, assert Jason’s newly discovered evidence will not change the outcome and serves only to muddy the water. Plaintiffs maintain because Jason is relying on untrustworthy hearsay evidence, it is inadmissible in a trial and, therefore, cannot change the outcome.

A. *Applicable Law.* Under Iowa rule of Civil Procedure 1.1012, material evidence, newly discovered, which could not, with reasonable diligence, have been discovered and produced at the trial and was not discovered within the time for moving for a new trial under Rule 1.1004, may entitle a party to have the judgment corrected, vacated, or modified. Alternatively, it is ground for a new trial. Iowa R. Civ. P. 1.1012. That is Jason Carter’s claim here.

In order to establish grounds to vacate the judgment or grant him a new trial, Jason must

prove:

1. The evidence was discovered after the trial,
2. The evidence could not have been discovered earlier,
3. The evidence is material, meaning it is not merely cumulative or impeaching evidence, and
4. The evidence would likely or probably change the result.

See *Walters v. State*, 843 N.W.2d 477 (Iowa Ct. App. 2014). Motions for new trials based on newly discovered evidence are disfavored in the law, should be closely scrutinized, and granted sparingly. *Tedrow v. Fort Des Moines Cmty. Servs., Inc.*, 254 Iowa 193, 200, 117 N.W.2d 62, 66 (1962). The burden of proof to establish grounds to vacate the judgment or grant a new trial is on the party seeking it, here, Jason. See *In re Marriage of Heneman*, 396 N.W.2d 797, 800 (Iowa Ct. App. 1986).

B. *Application of the Law.* The Court concludes Jason failed to carry his burden of proof to establish grounds for vacating the judgment or granting him a new trial. In this case, the Court concurs with Plaintiffs that Jason's alleged newly discovered evidence is inadmissible at a trial. Since the evidence that Jason asserts will change the outcome is inadmissible, it cannot change the result.

1. *Discovery of the Evidence after Trial.* As to the first element that the evidence was discovered after the trial, the Court agrees with Jason. Although defense counsel had reason to know other persons were implicated in the murder, the actual evidence of those allegations was not available to Jason at the time of trial. The evidence was discovered in the form of interview summaries conducted by the Department of Criminal Investigation with various individuals being held in the Marion County Jail. Some of the interviews were with individuals named by people being held in the Marion County Jail. The results, while repeating consistently the same names, varied in terms of the facts and the opinion of the speaker. Nevertheless, the interview summaries were unavailable to Jason Carter prior to or during the civil jury trial and were not discovered by him until well after the time for filing a motion for new trial.

2. *The Evidence Could Not Have Been Discovered Earlier.* Likewise, the evidence could not have been discovered earlier by Jason because he did not have access to the DCI's investigatory files. The DCI had an agreement with Plaintiffs for an exchange of information, but it did not include all the information gathered by the DCI during the investigation. The DCI did not make available to either Plaintiff or Defendant the interview summaries upon which

Jason now relies.

3. Materiality of the Evidence. Whether the evidence is material, as Jason claims, is debatable. Evidence is material when it is relevant and significant, such that there is a reasonable probability it will impact the outcome. See *State v. Romeo*, 542 N.W.2d 543, 551 (Iowa 1996); *Brewer v. State*, 444 N.W.2d 77, 82 (Iowa 1989). In order to justify a new trial, the newly discovered evidence must be more than just impeaching or cumulative. *Benson v. Richardson*, 537 N.W.2d 748, 762–63 (Iowa 1995).

Much of the evidence submitted by Jason tends to impeach or contradict other evidence offered during the trial. Evidence must be more than impeaching to qualify Jason's case for a new trial. See *State v. Allen*, 348 N.W.2d 243, 246 (Iowa 1984). Jason argues that witnesses called at a new trial could be confronted with statements the witness allegedly made to others and if the witness denied the statement, Jason could impeach the witness. Theoretically, this would occur either through the statement or the testimony of the witness who provided the statement. While the Court sees multiple problems with this approach, the biggest one is that such use of prior hearsay statements is not substantive evidence. In order to qualify for a new trial, the newly discovered evidence must be substantive so as to change the outcome. *Id.*

In addition, some of the evidence Jason wishes to offer in a new trial is contrary to known facts of the case. Some of those facts came from Jason's own evidence during the civil trial. For example, both experts for Plaintiff and Defendant expressed the opinion that what appeared to be a burglary at the crime scene was staged by whoever shot Shirley Carter. Both experts reached this conclusion because there were items that remained at the crime scene that any burglar would take, including in excess of \$1,000 in cash, pill bottles with pills with a marketable value, electronic equipment, and Shirley Carter's purse, which also contained cash. Both the experts concluded, based on these and other facts, whoever killed Shirley Carter was not a burglar. However, in virtually every story provided by criminal defendants looking for a deal, the burglars were in search of drugs and the situation "went bad" and Shirley Carter ended up dead. Thus, it appears to the Court that the evidence Jason Carter wishes to offer, is not material to the outcome because of its inconsistency with other known facts of the case.

4. Likelihood the Evidence Will Change the Result. However, assuming, without concluding, that the newly discovered evidence is material, the Court determines it would not change the outcome. The reason it would not change the outcome is that the evidence proffered

by Jason Carter is inadmissible. Evidence cannot change the outcome if it is not admitted at the trial.

In this case, virtually all the allegedly newly discovered evidence is hearsay. The summaries of the interviews are of people who allegedly spoke with other people who spoke with the alleged killers. In one instance the “informant” claimed he heard about the murder from one of the killers, but this statement is still hearsay, making it inadmissible. In the absence of producing the alleged killers at the trial and relying on them to confess, Jason has failed to offer any admissible evidence that could make a difference in the result.

During the proceeding on the petition to vacate, Plaintiffs objected to almost every offer of evidence made by Jason based on hearsay. Sometimes it was one level of hearsay, sometimes it was multiple levels of hearsay. The Court sustained these objections, at which point Defendant would make an offer or proof. In fact, this process became so routine during the course of the proceeding that the Court would simply ask if the defendant wished to make an offer of proof after sustaining the objection. The Court did not change its ruling on the admissibility of any of the evidence offered by Jason. The Court sustained all or nearly all of Plaintiffs’ objections. Contrary to defense counsel’s argument, if the hearsay evidence is inadmissible in the proceeding on the petition to vacate, it is highly improbable that it would be admitted during a civil jury trial.

In preparing this ruling, the Court spent considerable time not only examining the Rules of Evidence and the Rules of Civil Procedure, but also reviewing the exceptions to the hearsay rule of which there are many. This Court was unable to locate, based on the evidence presented during the proceeding, any exception to the hearsay rule that would allow the Court to admit the evidence Jason claims is newly discovered. Further, the Iowa Supreme Court, in a slightly different context held the trial court erred when it allowed the prosecution to call witnesses to introduce otherwise inadmissible hearsay evidence as impeachment. See *State v. Turecek*, 456 N.W.2d 219, 225 (Iowa 1990).

Similarly, here, it would be error for this Court, relying on otherwise inadmissible evidence, whether as impeachment or otherwise, to grant a new trial or to vacate the existing judgment. The Court must deny Jason’s request to vacate the judgment or grant him a new trial.

III. CONCLUSION

The Court concludes Jason Carter failed to meet his burden of proof to establish a basis

for a new trial or to vacate the judgment. The evidence that he seeks to offer is inadmissible, and therefore will not change the result. Unless there is a probability of a different result, the Court cannot grant Jason Carter's petition. For these reasons, the Court denies the petition to vacate or for new trial and dismisses the same at Jason Carter's costs.

SO ORDERED.

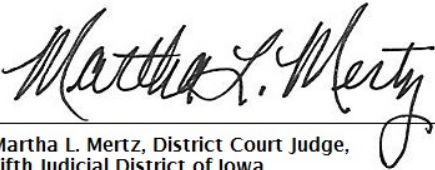


State of Iowa Courts

Type: OTHER ORDER

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So Ordered


Martha L. Mertz, District Court Judge,
Fifth Judicial District of Iowa